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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,635	02/25/2002	Charles Kannankeril	D-30270-01	4449

7590 04/07/2004  
Sealed Air Corporation  
P.O. Box 464  
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EXAMINER

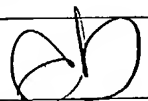
AFTERGUT, JEFF H

ART UNIT PAPER NUMBER

1733

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/082,635	<b>Applicant(s)</b> KANNANKERIL ET AL.	
	<b>Examiner</b> Jeff H. Aftergut	<b>Art Unit</b> 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Election/Restrictions***

1. Claims 1-11 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the response dated 2-11-04.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 12-15, 21-26, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottaviano '865 in view of either one of Fox or Kawakami, either one of Pharo or Lewicki et al and any one of Japanese Patent 10-151627, E.P. 483,665, or Clements for the same reasons as presented in paper no. 7, paragraph 4.

With regard to claims 21-26, the references to Japanese Patent '627, E.P. '665 and Clements all suggested that those skilled in the art at the time the invention was made would have incorporated the polyester in the form of a recycled polyester material. The reference to Japanese Patent '627 expressly extruded a polyester layer from recycled polyester which was 100% post consumer (recycled) polyester material. Clearly, the artisan would have understood that the polyester core layer (which was the oxygen barrier) would have suitably included an oxygen barrier which was 100% recycled polyester. With respect to the specified intrinsic viscosity of the recycled polyester, this is taken to include the conventional ranges of intrinsic viscosity for recycled polyester (which is an intrinsic property of the recycled polyester material as well as the virgin polyester material). Applicant is advised that one skilled in the art would have understood that the specified intrinsic viscosities is nothing more than stating that recycled

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and/or virgin polyester is present in the polyester layer. Regarding claim 30, the applicant is advised that one skilled in the art would have understood that one film would have been shaped to provide the bubbles and the other film would have been a flat film in the operation as such was clearly envisioned by Ottaviano. Regarding claim 31, note that the reference to Ottaviano suggested the specified thickness for the films used in the manufacture of the bubble wrap® materials, see column 4, lines 5-14, for example.

4. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 3 further taken with Chavannes '387 for the same reasons as expressed in paper no. 7, paragraph 5.

5. Claims 19, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 3 further in view of any one of Matarasso, DeLuca et al, Simhaee or Larson '306 for the same reasons as presented in paragraph 6 of paper no. 7.

With regard to new claim 29, note that the reference to Simhaee suggested that those skilled in the art would have formed the inflatable dunnage from flat sheets of material.

6. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 3 further taken with any one of Rameriez (newly cited), Ramesh (newly cited) or Bekele (newly cited).

The references as set forth above in paragraph 3 suggested that one skilled in the art at the time the invention was made would have incorporated an oxygen barrier in the film which included a recycled polyester layer, however there is no indication that those versed in the art at the time the invention was made would have incorporated a tie layer between the core oxygen barrier and the heat sealing layers of the film used to make the bubble wrap®. However, those

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skilled in the art at the time the invention was made would have known to incorporate tie layers between these heat seal layers and the oxygen barrier (the polyester layer) as such was common practice in the art in order to ensure good adhesion between the seal layers and the core as evidenced by any one of Rameriez, Ramesh or Bekele. The references to any one of Rameriez (column 4, lines 11-21, column 7, lines 32-42), Ramesh (column 4, lines 26-38, column 14, lines 62-68, column 18, lines 9-44) or Bekele (column 4, lines 14-16, column 7, lines 57-67) suggested that it was known per se to incorporate a tie layer between other layers of a multilayer film including adjacent barrier (oxygen barrier) layers to better adhere the barrier layers to the remaining layers of the assembly. In order to ensure good adhesion of the layers of the multilayer assembly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tie layers of any one of Rameriez, Ramesh or Bekele in the operation of forming a multilayer film where the tie layers were used to join an oxygen barrier film layer to the other layers of the film in the process of making the bubble wrap® as set forth above in paragraph 3.

### *Response to Arguments*

7. Applicant's arguments filed 2-26-04 have been fully considered but they are not persuasive.

The applicant essentially argues that while Ottaviano suggested that those skilled in the art would have incorporated an oxygen barrier layer which was nylon, the mere fact that the art recognized that other oxygen barrier layers in an analogous art (as suggested by the references to any one of Pharo or Lewicki et al) is not enough to render the claimed invention obvious because: (1) Pharo or Lewicki et al do not state that it would have been desirable to utilize the

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polyester material instead of the nylon employed by Ottaviano, and; (2) the references to Pharo or Lewicki et al do not suggest that one skilled in the art would have utilized a recycled polyester material.

Regarding the first noted deficiency expressed by applicant, the applicant is advised that where, as here, two equivalents are interchangeable for their desired function (in this case either a nylon layer of a polyester layer would have presented itself as an oxygen barrier in the film material), an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious, In re Fout, 213 USPQ 532, In re Siebentritt, 152 USPQ 618. Clearly, the references to either one of Pharo or Lewicki et al suggested the use of polyester as a barrier film material (an oxygen barrier) as an alternative to nylon materials and thus one skilled in the art would have known that the same were art recognized alternatives for practice of the claimed invention. The references did not express that one would have selected a polyester material which was a recycled polyester material; however those skilled in the art at the time the invention was made would have readily appreciated that the use of a recycled material would have had benefits from an economic point of view.

The references to any one of Japanese Patent 10-151627, E.P. 483,665, or Clements suggested that those skilled in the art at the time the invention was made would have desired to incorporate recycled polyester in a polyester film material used to form consumer goods as the recycled polyester offered a means to reduce the cost of the product without effecting in a negative way the resulting end product. It should be noted that one skilled in the art would have readily appreciated that the use of recycled polyester would have afforded one with an economic benefit over that which one would have foreseen when using a virgin polyester material.

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Additionally, the supply of recycle polyester material is large and to reduce the amount of these materials certainly would have been desirable to the ordinary artisan in the plastics industry. It therefore would have been obvious to the ordinary artisan not only to employ a polyester material for the oxygen barrier wherein the polyester material utilized included recycled post consumed polyester materials (as such would have afforded one with an economic benefit).

The applicant noted that the use of the recycled polyester in the polyester barrier layer allowed the material to be melt processed at a lower temperature than that which would have been possible with the use of virgin polyester, however the applicant is advised that the claims at hand do not recite this feature (nor is there any suggestion in the claims of the need to process the polyester at a lower temperature in order to co extrude the same with the other layers as alleged by applicant). As such the applicant's arguments in this regard are not commensurate in scope with the claims at hand.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

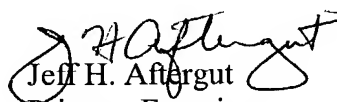
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
April 1, 2004